IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6714 of 2007(S)

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CRIME NO. 25 OF 2007 OF MANNARKAD EXCIE RANGE

PETITIONERS/ACCUSED 1 AND 2

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1. SUBRAMONIAN,S/O.VELLEKKEN,
SRAMBICKAL VEEDU, PULLASSERY POST,
MANNARKKADU.

2. SADANANDAN,S/O.AYYAPANKUTTY,
MELAYIL VEEDU,ELAMPULASSERY, MANNARKKADU.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS: COMPLAINANT

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EXCISE INSPECTOR , MANNARKKAD EXCISE
RANGE REP. PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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B.A.No. 6714 of 2007

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Dated this the 5th day of November, 2007

**O R D E R**

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether there are only two accused persons. They face allegations under the Kerala Abkari Act. On 18.10.2007, illicit activity of distillation was going on by the river side. The Excise party allegedly received discreet information. They rushed to the scene. They found that the distillation was going on. The petitioners, who were present there and who were engaging themselves in the activity of distillation, allegedly took to their heels on seeing the Excise party. They could not apprehend the petitioners. 20 litres of arrack, 100 litres of wash and utensils were seized. The name of the petitioners as persons who ran away from the scene are noted in the seizure mahazar. The occurrence report also shows their complicity. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that it is a case of mistaken identity. They were sand workers employed in the locality. It is true that they did not want to remain there when the Excise party was effecting the seizure. But it is totally false to conclude that the petitioners were engaging themselves in the activity of distillation. The petitioners may in these circumstances be granted anticipatory bail. They have no criminal antecedents.

3. The learned Prosecutor opposes the application. All available indications do clearly show the culpability of the petitioners. It may not be reckoned that they are innocent. The petitioners may be directed to resort to the ordinary and normal course of appearing before the Investigator or the learned Magistrate and then seek regular bail.

4. I have considered all the relevant inputs. I find merit in the opposition raised by the learned Prosecutor. I am satisfied that there are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. I am satisfied that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or

the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

**(R. BASANT)**
Judge

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